

AMENDED IN SENATE FEBRUARY 23, 1998
AMENDED IN ASSEMBLY JANUARY 16, 1998
AMENDED IN ASSEMBLY JANUARY 5, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1225

Introduced by Assembly Member Granlund

February 28, 1997

An act to amend Sections 27491.4 and 27491.41 of, *and to repeal Section 27491.47 of*, the Government Code, *and to amend Sections 7150.5 and 7155 of, and to repeal and add Section 7151.5 of*, Section 7150.5 of the Health and Safety Code, relating to health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1225, as amended, Granlund. Health: Sudden Infant Death Syndrome and anatomical gifts.

(1) Existing law requires ~~the~~ a coroner to inquire into and determine the circumstances, manner, and cause of all violent, sudden, or unusual deaths, including deaths where the suspected cause is sudden infant death syndrome.

Existing law permits ~~the~~ a coroner, as part of this inquiry, to take possession of the body and make, or cause to be made, a post mortem examination or autopsy of the body to make findings pertinent to establishing the cause of death.

Existing law requires this examination or autopsy where sudden infant death syndrome is the suspected cause of death, unless the infant's physician of record certifies sudden infant

death syndrome as the cause of death and a parent objects to an autopsy on religious or ethical grounds.

~~This bill would delete this exception, and would make conforming changes in related provisions.~~ By requiring examination or autopsy in all cases in which sudden infant death syndrome is suspected as the cause of death, this bill would impose a state-mandated local program.

(2) Existing law requires a coroner to perform an autopsy in any case where an infant has died suddenly and unexpectedly. Existing law provides that no consent is required prior to undertaking this autopsy. Existing law provides, however, that no autopsy is required if the physician of record certifies the cause of death is sudden infant death syndrome and the parents object to an autopsy on religious or ethical grounds.

This bill would revise this exception to provide, instead, that no autopsy is required if the attending physician certifies the cause of death is sudden infant death syndrome and the coroner agrees.

(3) The Uniform Anatomical Gift Act sets forth the standards and procedures for making, revoking, and refusing anatomical gifts. Among other things, the act authorizes an individual who is at least 18 years of age to make an anatomical gift for certain purposes, limit an anatomical gift to one or more of those purposes, refuse to make an anatomical gift, or amend or revoke an anatomical gift. Existing law also specifies the manner that consent may be given to make an anatomical gift.

This bill would permit a person between 15 and 18 years of age to make an anatomical gift, to the same extent as a person who is at least 18 years of age, upon the written consent of the person's parent or guardian. This bill would also permit an anatomical gift to be made, amended, or revoked by an oral statement made by means of a tape recording in the donor's own voice.

~~(3) The act authorizes a coroner, medical examiner, hospital, or local public health officer to release and permit the removal of a part from a body within that person's or entity's custody, for transplantation, therapy, or reconditioning if certain requirements are met.~~

~~This bill would repeal this authorization and instead would prohibit a coroner, medical examiner, hospital, local public health official, or any other person from releasing and permitting the removal of a part from a body, including a cornea, from a body within that person's or entity's custody for transplantation, therapy, or reconditioning unless the decedent or certain specified persons made an anatomical gift in accordance with certain provisions or the person or entity obtains consent from certain specified persons either in writing or, upon consent of the parties involved, by a tape recorded telephone conversation.~~

~~(4) The act also makes it a felony for a person to knowingly, for valuable consideration, purchase or sell a part for transplantation, therapy, or reconditioning, if removal of the part is intended to occur after the death of the decedent.~~

~~This bill would also prohibit a 3rd party, other than certain specified persons who have consented to the removal of a body part of the decedent in accordance with specified provisions, from receiving compensation for the sale or transfer of that body part for transplantation, therapy, or reconditioning. By creating a new crime, this bill would impose a state-mandated local program.~~

~~(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

~~(4) Existing law authorizes the Department of Motor Vehicles to indicate on a form carried with the driver's license~~

or an identification card the licensee's or cardholder's desires with regard to making an anatomical gift.

This bill would except these provisions from the authority granted by this bill regarding anatomical gifts and would make conforming changes.

(5) Existing law authorizes a coroner, in the course of an autopsy, to remove and release, or authorize the removal and release of, corneal eye tissue from a body within the coroner's custody if certain conditions are met. Existing law further prohibits the coroner or medical examiner authorizing the removal of the corneal tissue, or any hospital, medical center, tissue bank, storage facility, or person acting upon the request, order, or direction of the coroner or medical examiner in the removal of corneal tissue, from incurring civil liability for that removal in an action brought by any person who did not object prior to the removal of the corneal tissue, or from being subject to criminal prosecution for the removal of that tissue.

This bill would repeal those provisions.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 27491.4 of the Government
2 Code is amended to read:
3 27491.4. (a) For purposes of inquiry the coroner
4 shall, within 24 hours or as soon as feasible thereafter,
5 where the suspected cause of death is sudden infant death



1 syndrome and, in all other cases, the coroner may, in his
2 or her discretion, take possession of the body, which shall
3 include the authority to exhume the body, order it
4 removed to a convenient place, and make or cause to be
5 made a post mortem examination or autopsy thereon, and
6 make or cause to be made an analysis of the stomach,
7 stomach contents, blood, organs, fluids, or tissues of the
8 body. The detailed medical findings resulting from an
9 inspection of the body or autopsy by an examining
10 physician shall be either reduced to writing or
11 permanently preserved on recording discs or other
12 similar recording media, shall include all positive and
13 negative findings pertinent to establishing the cause of
14 death in accordance with medicolegal practice and this,
15 along with the written opinions and conclusions of the
16 examining physician, shall be included in the coroner's
17 record of the death. The coroner shall have the right to
18 retain only ~~such~~ *those* tissues of the body removed at the
19 time of the autopsy as may, in his or her opinion, be
20 necessary or advisable to the inquiry into the case, or for
21 the verification of his *or her* findings. No person may be
22 present during the performance of a coroner's autopsy
23 without the express consent of the coroner.

24 (b) In any case in which the coroner knows, or has
25 reason to believe, that the deceased has made valid
26 provision for the disposition of his or her body or a part
27 or parts thereof for medical or scientific purposes in
28 accordance with Chapter 3.5 (commencing with Section
29 7150) of Part 1 of Division 7 of the Health and Safety Code,
30 the coroner shall neither perform nor authorize any other
31 person to perform an autopsy on the body unless the
32 coroner has contacted or attempted to contact the
33 physician last in attendance to the deceased. If the
34 physician cannot be contacted, the coroner shall then
35 notify or attempt to notify one of the following of the need
36 for an autopsy to determine the cause of death: (1) the
37 surviving spouse; (2) a surviving child or parent; (3) a
38 surviving brother or sister; (4) any other kin or person
39 who has acquired the right to control the disposition of
40 the remains. Following a period of 24 hours after

1 attempting to contact the physician last in attendance
2 and notifying or attempting to notify one of the
3 responsible parties listed above, the coroner may perform
4 or authorize the performance of an autopsy, as otherwise
5 authorized or required by law.

6 (c) Nothing in this section shall be deemed to prohibit
7 the discretion of the coroner to conduct autopsies upon
8 any victim of sudden, unexpected, or unexplained death
9 or any death known or suspected of resulting from an
10 accident, suicide, or apparent criminal means, or other
11 death, as described in Section 27491.

12 SEC. 2. Section 27491.41 of the Government Code is
13 amended to read:

14 27491.41. (a) For purposes of this section, “sudden
15 infant death syndrome” means the sudden death of any
16 infant that is unexpected by the history of the infant and
17 where a thorough post mortem examination fails to
18 demonstrate an adequate cause of death.

19 (b) The Legislature finds and declares that sudden
20 infant death syndrome (SIDS) is the leading cause of
21 death for children under age one, striking one out of
22 every 500 children. The Legislature finds and declares
23 that sudden infant death syndrome is a serious problem
24 within the State of California, and that public interest is
25 served by research and study of sudden infant death
26 syndrome, and its potential causes and indications.

27 (c) (1) To facilitate these purposes, the coroner shall,
28 within 24 hours, or as soon thereafter as feasible, perform
29 an autopsy in any case where an infant has died suddenly
30 and unexpectedly.

31 (2) *However, if the attending physician certifies that*
32 *the cause of death is sudden infant death syndrome and*
33 *the coroner agrees, no autopsy shall be required pursuant*
34 *to this subdivision.*

35 (d) The autopsy shall be conducted pursuant to a
36 standardized protocol developed by the State
37 Department of Health Services. The protocol is exempt
38 from the procedural requirements pertaining to the
39 adoption of administrative rules and regulations pursuant
40 to Article 2 (commencing with Section 11342) of Chapter

1 3.5 of Part 1 of Division 3 of Title 2 of the Government
2 Code. The protocol shall be developed and approved by
3 July 1, 1990.

4 (e) The protocol shall be followed by all coroners
5 throughout the state when conducting the autopsies
6 required by this section. The coroner shall state on the
7 certificate of death that sudden infant death syndrome
8 was the cause of death when the coroner's findings are
9 consistent with the definition of sudden infant death
10 syndrome specified in the standardized autopsy protocol.
11 The protocol may include requirements and standards for
12 scene investigations, requirements for specific data,
13 criteria for ascertaining cause of death based on the
14 autopsy, and criteria for any specific tissue sampling, and
15 any other requirements. The protocol may also require
16 that specific tissue samples must be provided to a central
17 tissue repository designated by the State Department of
18 Health Services.

19 (f) The State Department of Health Services shall
20 establish procedures and protocols for access by
21 researchers to any tissues, or other materials or data
22 authorized by this section. Research may be conducted
23 by any individual with a valid scientific interest and prior
24 approval from the State Committee for the Protection of
25 Human Subjects. The tissue samples, the materials, and
26 all data shall be subject to the confidentiality
27 requirements of Section 103850 of the Health and Safety
28 Code.

29 (g) The coroner may take tissue samples for research
30 purposes from infants who have died suddenly and
31 unexpectedly without consent of the responsible adult if
32 the tissue removal is not likely to result in any visible
33 disfigurement.

34 (h) A coroner shall not be liable for damages in a civil
35 action for any act or omission done in compliance with
36 this section.

37 (i) No consent of any person is required prior to
38 undertaking the autopsy required by this section.

39 SEC. 3. *Section 27491.47 of the Government Code is*
40 *repealed.*

~~27491.47. (a) Notwithstanding any other provision of law, the coroner may, in the course of an autopsy, remove and release or authorize the removal and release of corneal eye tissue from a body within the coroner's custody, if all of the following conditions are met:~~

~~(1) The autopsy has otherwise been authorized.~~

~~(2) The coroner has no knowledge of objection to the removal and release of corneal tissue having been made by the decedent or any other person specified in Section 7151.5 of the Health and Safety Code.~~

~~(3) The removal of such tissue will not unnecessarily mutilate the body, be accomplished by enucleation, nor interfere with the autopsy.~~

~~(4) The tissue will be removed by a coroner, licensed physician and surgeon, or a trained transplant technician.~~

~~(5) The tissue will be released to a public or nonprofit facility for transplant, therapeutic, or scientific purposes.~~

~~(b) Neither the coroner nor medical examiner authorizing the removal of the corneal tissue, nor any hospital, medical center, tissue bank, storage facility, or person acting upon the request, order, or direction of the coroner or medical examiner in the removal of corneal tissue pursuant to this section, shall incur civil liability for such removal in an action brought by any person who did not object prior to the removal of the corneal tissue, nor be subject to criminal prosecution for the removal of such corneal tissue pursuant to the provisions of this section.~~

~~SEC. 4. Section 7150.5 of the Health and Safety Code is amended to read:~~

~~7150.5. (a) *Except as provided in subdivision (b) of Section 12811 of, and subdivision (b) of Section 13005 of, the Vehicle Code*, an individual who is at least 18 years of age, or an individual who is between 15 and 18 years of age as specified in subdivision (m), may make an anatomical gift for any of the purposes stated in subdivision (a) of Section 7153, limit an anatomical gift to one or more of those purposes, or refuse to make an anatomical gift.~~

~~(b) An anatomical gift may be made only by one of the following:~~

1 (1) A document of gift signed by the donor.

2 (2) A document of gift signed by another individual
3 and by two witnesses, all of whom have signed at the
4 direction and in the presence of the donor and of each
5 other, and state that it has been so signed.

6 (3) A document of gift orally made by a donor by
7 means of a tape recording in his or her own voice.

8 (c) If a document of gift is *attached to or* imprinted on
9 a donor's motor vehicle operator's or chauffeur's license,
10 the document of gift shall comply with subdivision (b).
11 Revocation, suspension, expiration, or cancellation of the
12 license does not invalidate the anatomical gift.

13 (d) A document of gift may designate a particular
14 physician or surgeon to carry out the appropriate
15 procedures. In the absence of a designation or if the
16 designee is not available, the donee or other person
17 authorized to accept the anatomical gift may employ or
18 authorize any physician, surgeon, technician, or
19 enucleator to carry out the appropriate procedures.

20 (e) An anatomical gift by will takes effect upon death
21 of the testator, whether or not the will is probated. If, after
22 death, the will is declared invalid for testamentary
23 purposes, the validity of the anatomical gift is unaffected.

24 (f) A donor may amend or revoke an anatomical gift,
25 not made by will, only by one or more of the following:

26 (1) A signed statement.

27 (2) An oral statement made in the presence of two
28 individuals or by means of a tape recording in the donor's
29 own voice.

30 (3) Any form of communication during a terminal
31 illness or injury addressed to a physician or surgeon.

32 (4) The delivery of a signed statement to a specified
33 donee to whom a document of gift had been delivered.

34 (g) The donor of an anatomical gift made by will may
35 amend or revoke the gift in the manner provided for
36 amendment or revocation of wills, or as provided in
37 subdivision (f).

38 (h) An anatomical gift that is not revoked by the donor
39 before death is irrevocable and does not require the

1 consent or concurrence of any person after the donor's
2 death.

3 (i) An individual may refuse to make an anatomical
4 gift of the individual's body or part by a writing signed in
5 the same manner as a document of gift, a statement
6 *attached to or* imprinted on a donor's motor vehicle
7 operator's or chauffeur's license, or any other writing
8 used to identify the individual as refusing to make an
9 anatomical gift. During a terminal illness or injury, the
10 refusal may be an oral statement or other form of
11 communication.

12 (j) In the absence of contrary indications by the donor,
13 an anatomical gift of a part is neither a refusal to give
14 other parts nor a limitation on an anatomical gift under
15 Section 7151 or on a removal or release of other parts
16 under Section 7151.5.

17 (k) In the absence of contrary indications by the
18 donor, a revocation or amendment of an anatomical gift
19 is not a refusal to make another anatomical gift. If the
20 donor intends a revocation to be a refusal to make an
21 anatomical gift, the donor shall make the refusal pursuant
22 to subdivision (i).

23 (l) Any signed statement that is in compliance with
24 this chapter, or a driver's license or identification card
25 that meets the requirements for validity set forth in
26 subdivision (b) of Section 12811 of the Vehicle Code or
27 subdivision (b) of Section 13005 of the Vehicle Code, shall
28 be honored and no further consent or approval from the
29 next of kin or other person listed in subdivision (a) of
30 Section 7151 shall be required.

31 (m) Notwithstanding subdivision (a), an individual
32 who is between 15 and 18 years of age may make an
33 anatomical gift for any purpose stated in subdivision (a)
34 of Section 7153, limit an anatomical gift to one or more of
35 those purposes, refuse to make an anatomical gift, or
36 amend or revoke an anatomical gift, only upon the
37 written consent of a parent or guardian.

38 ~~SEC. 4. Section 7151.5 of the Health and Safety Code~~
39 ~~is repealed.~~

1 ~~SEC. 5. Section 7151.5 is added to the Health and~~
2 ~~Safety Code, to read:~~

3 ~~7151.5. (a) Except as provided in subdivision (b), no~~
4 ~~coroner, medical examiner, hospital, local public health~~
5 ~~official, or any other person may release and permit the~~
6 ~~removal of a part from a body, including a cornea, within~~
7 ~~that person's or entity's custody for transplantation,~~
8 ~~therapy, or reconditioning unless the decedent or a~~
9 ~~person listed in subdivision (a) of Section 7151 made an~~
10 ~~anatomical gift in accordance with this chapter.~~

11 ~~(b) Notwithstanding subdivision (a), a coroner,~~
12 ~~medical examiner, hospital, local public health official, or~~
13 ~~any other person may release and permit the removal of~~
14 ~~a part from a body, including a cornea, within that~~
15 ~~person's or entity's custody for transplantation, therapy,~~
16 ~~or reconditioning if the person or entity obtains consent~~
17 ~~from a person listed in subdivision (a) of Section 7151~~
18 ~~either in writing or, upon consent of the parties involved,~~
19 ~~by means of a tape recorded telephone conversation.~~

20 ~~SEC. 6. Section 7155 of the Health and Safety Code is~~
21 ~~amended to read:~~

22 ~~7155. (a) A person may not knowingly, for valuable~~
23 ~~consideration, purchase or sell a part for transplantation,~~
24 ~~therapy, or reconditioning, if removal of the part is~~
25 ~~intended to occur after the death of the decedent. No~~
26 ~~third party, other than a person listed in subdivision (a)~~
27 ~~of Section 7151 who has consented to the removal of a~~
28 ~~body part of the decedent in accordance with Section~~
29 ~~7151 or 7151.5, may receive compensation for the sale or~~
30 ~~transfer of that body part for transplantation, therapy, or~~
31 ~~reconditioning.~~

32 ~~(b) Valuable consideration does not include~~
33 ~~reasonable payment for the removal, processing, disposal,~~
34 ~~preservation, quality control, storage, transplantation, or~~
35 ~~implantation of a part.~~

36 ~~(c) A person who violates this section is guilty of a~~
37 ~~felony and upon conviction shall be punished by~~
38 ~~imprisonment in the state prison for three, five, or seven~~
39 ~~years, a fine not exceeding fifty thousand dollars~~
40 ~~(\$50,000), or both.~~

~~SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~

~~However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.~~

~~Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.~~

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

O